STATE OF MICHIGAN
IN THE SUPREME COURT

NATIONAL WINE & SPIRITS, INC.
NWS MICHIGAN, INC., and
NATIONAL WINE & SPIRITS, L.L.C.,

Plaintiff-Appellants,

v

STATE OF MICHIGAN,

Defendant-Appellee,

And

MICHIGAN BEER & WINE
WHOLESALERS ASSOCIATION,

Intervening Defendant-Appellee.
_____/

Supreme Court No. 126121

Court of Appeals No. 243524

Circuit Court for the County of Ingham
No. 02-13-CZ

126121
Supl

DEFENDANT-APPELLEE, STATE OF MICHIGAN'S
SUPPLEMENTAL BRIEF

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Dated: November 8, 2005

TABLE OF CONTENTS

Index of Authorities

Cases

SUPPLEMENTAL ARGUMENT

Consistent with this Court's October 14, 2005 Order, Defendant-Appellee, State of Michigan, files this supplemental brief only to clarify the issue that is truly before this court. Plaintiffs-Appellants, National Wine & Spirits, Inc., NWS Michigan, Inc., and National Wine & Spirits, L.L.C., (hereinafter NWS) invite this court to declare that MCL 436.1205 (§ 205) is unconstitutional by asking this court to sit as a *de facto* legislature because NWS believes the Michigan Legislature could have found a better way to achieve an unquestionably legitimate goal. But this Court has consistently recognized that making social policy is not a job for the courts:[1]

> As a general rule, making social policy is a job for the Legislature, not the courts. This is especially true when the determination or resolution requires placing a premium on one societal interest at the expense of another: "The responsibility for drawing lines in a society as complex as ours–of identifying priorities, weighing the relevant considerations and choosing between competing alternatives–is the Legislature's, not the judiciary's." [Citations omitted.]

NWS has consistently argued as though the State has the burden of proving that § 205 is constitutional. That approach is incorrect as a matter of law. Statutes are presumed to be constitutional:[2]

> Statutes are presumed constitutional. We exercise the power to declare a law unconstitutional with extreme caution, and we never exercise it where serious doubt exists with regard to the conflict.

Indeed, NWS has not met its burden here. NWS's entire argument is essentially that § 205 lacks a legitimate or rational purpose because the Legislature *could have* achieved that purpose in a way that would have better suited its business objectives. NWS argues that § 205 is arbitrary or discriminatory because the Legislature could have chosen a different method to accomplish its goals, and therefore, the Legislature's *actual* goals must be insidious. Based on innuendo and

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[1] *Terrien v Zwit*, 467 Mich 56, 67; 648 NW2d 602 (2002)

[2] *Phillips v MIRAC, Inc.*, 470 Mich 415, 422; 685 NW2d 174 (2004)

suggestion, then, NWS asks this Court to second-guess the Legislature and force it to re-write a valid statute.

NWS has tried to direct this Court's attention to *Granholm v Heald*,[3] even though that case dealt with a **facially** discriminatory statute in a completely different context, as though the United States Supreme Court somehow suggested in that case that Michigan's entire Liquor Control Code was constitutionally suspect. NWS's arguments cannot deny the reality that § 205 is neutral on its face and as applied. As recognized by the two lower courts, NWS was treated the same as any other similarly situated Michigan resident. NWS lacks any actual evidence of discriminatory intent. All that remains is NWS's belief that it could have written a better statute than the Legislature did—even though NWS also admits that it was part of the very Legislative process that it is attacking. But, the legislature's precise method of achieving its goals is a policy choice:[4]

> ...policy decisions are properly left for the people's elected representatives in the Legislature, not the judiciary. The Legislature, unlike the judiciary, is institutionally equipped to assess the numerous trade-offs associated with a particular policy choice.

NWS is **not** the Michigan Legislature. NWS lacks the ability to make policy choices for Michigan and § 205 is not constitutionally infirm simply because NWS can envision a different statute that would better suit its business model. As both the trial court and the Court of Appeals noted, NWS could have formed a Michigan wholesaler prior to September 24, 1996. As recognized by the lower courts, NWS is merely subject to the same limitations as any Michigan resident who became an ADA and subsequently a wholesaler after that date. As a result of these undisputed facts, § 205 does not violate the Commerce Clause, equal protection principles, or any other constitutional doctrine.

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[3] *Granholm v Heald,* 544 US ___, 125 S Ct 1885; 161 L Ed 2d 796 (2005)

[4] *Devillers v ACIA*, 473 Mich 562, 588-589; 702 NW2d 539 (2005)

Appellees have adequately briefed the legal issues before this court, and to remain faithful to this Court's October 14, 2005 Order, Appellee, State of Michigan, will not belabor the points already established there. Appellee, State of Michigan, asks this court to look past the innuendo and insinuation that permeate NWS's arguments and see those arguments for what they are—an improper attempt to effectively repeal a constitutional statute by judicial fiat. This court should reject this attempt, as it has rejected other such attempts in the past, and deny NWS's Application for Leave to Appeal.

WHEREFORE, Defendant-Appellee, State of Michigan, respectfully requests that this Court deny NWS's Application for Leave to Appeal.

Respectfully submitted,

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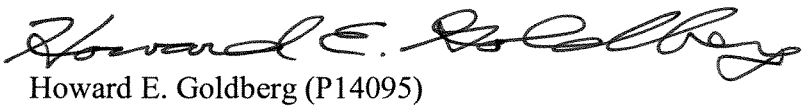

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